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UNION'S MEMORANDUM JOINING IN PETITION FOR WRIT OF CERTIORARI BY THE NATIONAL LABOR RELATIONS BOARD.

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v.

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UNION'S MEMORANDUM JOINING IN PETITION FOR WRIT OF CERTIORARI BY THE NATIONAL LABOR RELATIONS BOARD.

This proceeding stems from a charge to the National Labor Relations Board by respondent, Allis-Chalmers Manufacturing Company, asserting that the Union has violated the rights of certain of its members by imposing disciplinary fines to compel their adherence to authorized membership strikes for improved working conditions. But membership in the Union by Allis-Chalmers workers is not compulsory. Thus the Company is actually asserting for its employees a statutory right to choose to belong to the Union on their own terms, even to the extent of defying the group decision on the crucial issue whether to invoke a strike in the common interest.

1. The International Union, UAW, is a labor organiza-

tion comprised of constituent local unions and individual members. It is dedicated to a number of objectives (Stip. Exh. 4, Art. 2), the first of which is to "improve working conditions, create a uniform system of shorter hours and higher wages; to maintain and protect the interests of workers under the jurisdiction of this International Union." Allis-Chalmers employees are members of the UAW and its local unions through their own choice and decision. While it is true that the applicable contracts with Allis-Chalmers incorporate "union security" clauses, these do not compel union membership as such but only require an employee to become and remain "a member of the Union to the extent of paying his monthly dues . . ." (Art. IIA of Stip. Exhs. 1A, 19, 27 and 29).[1] Under Sec-

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[1] UAW President Walter P. Reuther in a presentation to a Congressional Committee in 1965 has underlined the limited thrust of the UAW's union shop requirement, under which no employee can be required "to participate in any union activity whatever if he does not desire to do so":

> ". . . there has been much loose talk about 'compulsory unionism' where the union shop prevails; [but] 'compulsory unionism' is a total misnomer. The fact is that under a Federal court decision of 1951 (*Union Starch and Refining Company* v. *NLRB*, 186 F. 2d 1008), a union shop contract may require all employees to pay dues needed for the operation of the union and its performance of its legal and contractual obligations, but no employee may be forced to join the union and participate in any form of union action if he has conscientious scruples or personal objections thereto. In recognition of this import of the Taft-Hartley Act, the standard UAW union shop contract provides that the employee shall be a member of the union only 'to the extent of paying his monthly dues.' And even beyond this limitation, in recognition of genuine moral scruples in individual cases, there exists a special agreement between the UAW and religious groups . . . permitting their members working at 'union shop' plants to contribute to the support of the union's charitable and welfare services in lieu of paying dues and initiation fees, and recognizing their right to abstain from 'attendance at meetings and other union activities'.
>
> "In sum, the pre-Taft-Hartley argument about compulsory unionism has proven to be illusory because under the 1947 law no employee in any State of the Union may be required on pain of discipline or discharge to participate in any union activity whatever if he does

tion 8(a)(3) of the NLRA that is the outer limit of permissible union security. See *Marlin Rockwell Corp.* 114 NLRB 553; *Radio Officers' Union* v. *NLRB*, 347 U.S. 17, 41. "Under the second proviso to § 8(a)(3), the burdens of membership upon which employment may be conditioned are expressly limited to the payment of initiation fees and monthly dues . . . 'Membership' as a condition of employment is whittled down to its financial core." *NLRB* v. *General Motors Corp.*, 373 U.S. 734, 742. This delimiting of the union security obligation to the payment of dues conforms with the Seventh Circuit's own decision in *Union Starch & Refining Co.* v. *NLRB*, 186 F. 2d 1008, cert. denied 342 U.S. 815.

2. Union solidarity in an economic strike is a matter of intense concern to the International Union and its locals. Numerous provisions of the Union's Constitution (Stip. Exh. 4) control conditions under which strikes may and may not be engaged in by local unions and they require members to "support strike action" when duly undertaken in accordance with the Constitution (Art. 2, Sec. 3). Moreover, the loyalty of the members of the Union to the common interest in such essential matters as a membership strike is required by the oath of membership (Art. 43) and elsewhere in the Constitution (Art. 41, Art. 6). Defiance of the collective determination to engage in or to refrain from a strike is thus a violation of the constitutional obligations of the member to his Union and to his fellow members.

3. Prior to the economic strikes involved in this case, which a few members declined to honor, careful procedures were employed to guarantee membership self-determination. Under the UAW Constitution (Art. 50), there must first be a membership meeting of the local union to deter-

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not desire to do so." Hearings before Subcommittee on Labor of the Committee on Education and Labor, House of Representatives, 89th Cong., 1st Sess. (on H.R. 77), Appendix, p. 902.

mine whether a formal strike vote shall be taken. If a strike vote is agreed to by a majority of those present, then "the Local Union Executive Board shall notify all members, and it shall require a two-thirds (⅔) vote by secret ballot of those voting to declare a strike." For example, the 1959 Allis-Chalmers strike by Local 248 was preceded by a formal strike vote of the membership on August 13, 1958, held upon individual mailed notice to all members prior to the taking of the vote, and resulting in a two-thirds ratification (see Stip. Exh. 16, pp. 51, 57). Even following that vote, however, the calling of the strike required the prior approval of the International Executive Board, and under the Constitution a strike called without such approval would have subjected locals and members to the severest forms of union discipline (see Art. 50, Secs. 2, 6 and 7).

4. After their defiance of the membership decision to strike, the dissident members who continued to work were given written charges and formal adversary hearing prior to the imposition of fines for violation of their constitutional obligations to the Union and their fellow members. Following trial a decision was rendered on each case. Thus, one Trial Board made the following pertinent findings (Stip. Exh. 9, p. 3):

> ". . . the accused persons attempted to reverse the action of the membership of Local 248 UAW and the International Union, who believed that in order to gain the objective sought, it was necessary and essential to engage in the strike action . . .
>
> "Among the duties of a member of Local 248 UAW and the International Union is to consciously seek to understand and exemplify by practice, the intent and purpose of the obligations of a member and to acquit himself as a loyal and devoted member of the Local and the International Union.

> "No greater act of disloyalty to the members on strike, to the local union and the International Union, and to the cause to which they have dedicated themselves can be committed by a member than to cross the picket lines which were established and authorized by his own union. The crossing of the picket lines did, in essence, give aid and comfort to the company at the very time when it was necessary to muster all of the moral and economic powers of the Local and International Union to gain the objectives of the strike."

5. Fines not in excess of $100 are authorized by the Union Constitution against persons duly charged, tried and found guilty by a Trial Board (Art. 30, Sec. 10). The fines imposed pursuant to the UAW Constitution in these cases were and are collectible through judicial action initiated under the decision of the Wisconsin Supreme Court in *UAW* v. *Woychick*, 5 Wis. 2d 528, 93 N.W. 2d 336.

6. On these facts the National Labor Relations Board (Member Leedom dissenting) ruled that the Union's conduct did not offend Section 8(b)(1) of the Act forbidding a union "to restrain or coerce employees in the exercise of the rights guaranteed in section 7." Upon Company petition for review to the Seventh Circuit, a unanimous panel opinion (per Judges Kiley, Knoch, and Castle) was issued on September 13, 1965 upholding the Labor Board's decision. For the benefit of the Court, the panel opinion subsequently withdrawn after rehearing before a full bench is set forth in the Appendix, *infra*, at pp. 11-20.

Following full bench rehearing, a new opinion and judgment of the court below was issued on March 11, 1966, reversing the Labor Board's decision as well as the Court's prior decision. Judges Knoch and Castle, who had participated in the original ruling, were joined in a majority opinion by Judges Duffy and Schnackenberg; separate

dissenting opinions were filed by Chief Judge Hastings, Judge Kiley, and Judge Swygert. (See Appendix to the Labor Board's Petition for Certiorari). The majority and dissenting opinions below are clearly divided on a concrete and important federal issue: *is it "coercion" forbidden by the National Labor Relations Act for a union to fine its own members who voluntarily join the union and then violate their union obligation to respect an authorized membership strike for economic gains?*

Additional Reasons for Granting the Writ

The majority opinion in the closely divided Court of Appeals below holds that it is "coercion" forbidden by the National Labor Relations Act for a union to fine its own members who have violated their organizational obligations to their fellow members—in this case by defying and subverting the union's democratically-determined decision on the question of striking to achieve economic benefits. The importance of the federal question thus posed is reviewed in the Board's Petition for Certiorari and requires no emphasis here. Nor need we belabor the manifest clash between the literalistic misapplication of the statute in the opinion below and this Court's ruling in *NLRB* v. *Drivers (Curtis Bros.)*, 362 U.S. 274, as well as the First Circuit's decision in *NLRB* v. *UAW*, 320 F. 2d 12. We do believe it appropriate, however, to underline the extent to which the Seventh Circuit's decision would extinguish the necessary power of a union as a membership organization to discipline offending members—a right long recognized by the authorities, upheld by judicial rulings, and recently confirmed by the Congress in Section 101(a)(2) and 101(a)(5) of the Labor-Management Reporting and Disclosure Act of 1959:

i. Until the instant case, union authority to fine offending members has historically been accepted and recognized.

Thus, in a comprehensive survey published in 1950 by Professor Clyde Summers—*Disciplinary Procedures of Unions,* 4 Ind. & Lab. Rel. Rev. 15, 26—it was concluded that traditionally:

> "The culminating element of union discipline is the infliction of a penalty on the convicted member. The three common types of penalties for offenses are fines, suspension for a limited period, and expulsion . . . [and] the most common form of penalty is the fine."

Moreover, the power to fine members for *strikebreaking* has been recognized as a particularly indispensable attribute of union solidarity: "the power to fine or expel strikebreakers is essential if the union is to be an effective bargaining agent" (Summers, *Legal Limitations on Union Discipline,* 64 Harv. L. Rev. 1049), because strikebreaking "undercuts the union's principal weapon and defeats the economic objective for which the union exists" (Summers, *Disciplinary Powers of Unions,* 3 Ind. & Lab. Rel. Rev. 483, 495). The same is true of unauthorized strikes by union members defying the collective decision to *refrain* from work stoppage. See *Parks* v. *International Brotherhood of Electrical Workers,* 314 F. 2d 886 (CA 4, 1963), cert. den., 372 U.S. 976.[2] *In construing the Act as preclud-*

[2] "It is so obvious that a union may punish its members for engaging in an unauthorized strike that the courts have never bothered to discuss the matter. A parent union may even revoke the charter of the local which engages in a wildcat strike and thereby expel all of the members in that local. Disciplining wildcat strikers may not only be a power but a positive duty of the union. Thus, a parent union has suspended a local because it failed to prosecute aggressively individual strikers, and in another case, an arbitrator held that under the special terms of the collective agreement involved, the union had broken its contract by failing to discipline members who had engaged in a stoppage.

"Strikebreakers receive little more protection than wildcat strikers. The union may punish not only those who do the work of men who are on strike, but also those who give the employer any other aid during the strike. Thus, a federal court upheld the expulsion of a member of the Locomotive Engineers who allowed the employer to use his name in suing

ing a union from fining members who work during an authorized *strike, the court below necessarily also precludes the fining of members who engage in an* unauthorized *strike.*[3]

ii. Consistent with the established and accepted union power to fine offending members, no decision prior to this case either under the National Labor Relations Act or the common law has impaired union authority in accordance with constitutional provisions and procedures to fine members for violating their reasonable organizational obligations. Decisions which have confirmed that authority include the prior ruling of the Seventh Circuit in *NLRB* v. *Amalgamated Local 286,* 222 F. 2d 95; the Fourth Circuit in *Parks* v. *I.B.E.W.,* 314 F. 2d 886; and the Wisconsin Supreme Court in *UAW* v. *Woychik,* 5 Wis. 2d 528, 93 N.W. 2d 336. Cf. *Rothstein* v. *Manuti,* 235 F. Supp. 39, 45-46 (D.C. S.D. N.Y.); *Simpson* v. *Painters and Glaziers District Council No. 51,* 39 LRRM 2131 (D.C. D.C.); *Rubens* v. *Weber,* 260 N.Y.S. 701, 237 App. Div. 15; *United States Rubber Co.,* 21 War Lab. Rep. 182.

iii. As recently as the 1959 Landrum-Griffin law, Congress itself reaffirmed the power of union discipline, both in Section 101(a)(5) controlling conditions under which union members may be "*fined, suspended,* [*or*] *expelled,*" and in

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to enjoin the strike. Even though the member felt the strike was unwise, improper, and highly unpatriotic, this conduct, the court pointed out, was viewed by the union to be the equivalent of treason—it was adherence to the enemy in time of struggle, giving him aid and comfort." Summers, *Legal Limitations on Union Discipline,* 64 Harv. L. Rev. 1049, 1065-1066 (footnotes omitted).

[3] The majority opinion below errs in suggesting that discipline of unauthorized strikers remains unimpaired because a "wildcat" strike is unprotected under the Act. It is true that during the life of a collective bargaining agreement the Act does not protect violation of a "no-strike" clause, but at expiration employees have a right under the NLRA to strike. The ruling below would bar the union from disciplining members who engage in such a wildcat strike.

Section 101(a)(2) disavowing any impairment of the right of a labor organization "*to adopt and enforce reasonable rules as to the responsibility of every member toward the organization . . .*"[4] The ruling below holds that the National Labor Relations Act forbids union fines against members violating their obligation of allegiance to a strike for the common interest; thereby it simply reads *out of* the 1959 statute these express Congressional affirmations of union disciplinary power to preserve solidarity from erosion by dissident members, and it does so by reading implications *into* the 1947 Act which were never intended by the general injunction of Section 8(b)(1) that unions shall not "restrain or coerce employees" in their exercise of statutory rights.

iv. Finally, there is a significant interplay between the majority opinion below and this Court's recent decision in *American Ship Building Company* v. *NLRB*, 380 U.S. 300. In *American Ship* the Court held that under the NLRA an employer is free as an economic weapon to lock out his employees—regardless of whether or not they belong to the union or desire to strike—thus in effect forcing a strike and depriving all employees of their "right to work". Yet the ruling of the majority below holds that the Act denies unions a reciprocal power of work stoppage though the interference with "right to work" is limited to the union's *own members* who violate their organizational obligation of adherence to a duly authorized strike. The net effect of this idiosyncratic reading of the National Labor Relations Act is that the *employer* may use

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[4] As Professor Archibald Cox has observed (*Internal Affairs of Labor Unions Under the Labor Reform Act of 1959*, 58 Mich. L. Rev. 819, 834-835): ". . . dissent in a union, like treason within a nation, must be suppressed if the purpose is to destroy the union, encourage a rival, or bring about the violation of legal or contractual obligations. Section 101(a)(2) contains an exception for these cases".

the historic union bargaining weapon of work stoppage, whereas the *union* is denied the power even to enforce membership solidarity in a concerted strike for economic gains.

Conclusion

The gratuitous impairment of labor union solidarity by the lower court's judicial embroidery on the National Labor Relations Act clearly presents an issue requiring this Court's review. Indeed, the need for an ultimate ruling on that issue is underlined even in the majority opinion below, which recognizes "the national significance of our decision to management and labor alike, as well as to other courts dealing with kindred or related matters . . ."

The Union joins in the request for this Court's review and respectfully submits that the writ should be granted.

Respectfully submitted,

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APPENDIX: Original Opinion in Court Below

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 14853 SEPTEMBER TERM, 1964 APRIL SESSION, 1965

ALLIS-CHALMERS MANUFACTURING COMPANY, *Petitioner*,

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*.

On Petition for Review of an Order of the National Labor Relations Board

SEPTEMBER 13, 1965

Before KNOCH, CASTLE and KILEY, *Circuit Judges*.

KILEY, *Circuit Judge*. Allis-Chalmers has petitioned this court to review and set aside the National Labor Relations Board's dismissal of a complaint against two locals of the intervening union, International Union, UAW-AFL-CIO (Locals 248 and 401), bargaining agents for certain Allis-Chalmers employees, charging that the union committed unfair labor practices in fining members for crossing picket lines during a strike called by the union. We deny the petition.

The facts are stipulated. The two locals in question are bargaining agents at the employer's West Allis and La-Crosse, Wisconsin plants. The collective bargaining agreements at both plants contain union security clauses which require that employees join the union within thirty days after hiring and "remain members of the Union to the extent of paying dues." Both locals struck the Allis-Chalmers plants, on economic issues, from February 2 to approximately April 20, 1959, and again between February 26 and approximately March 5, 1962. During each strike some employee-members of the union crossed the picket lines and worked.

Each strike was called in accordance with the procedures prescribed by the constitution of the International union: a majority agreement to hold a formal strike vote, notification to all members of the vote, approval of the strike by at least a two-thirds majority in secret balloting, followed by approval of the International Executive Board. After each strike formal written charges of violations of the International constitution and by-laws were served on the offending members, followed by formal adversary hearings before union Trial Boards resulting in fines ranging from $20.00 to $100.00.[1]

Some of the members have paid the fines in whole or in part, but others have refused to pay. The union has attempted to collect the fines but has made no effort to have members who refuse to pay them discharged, nor to affect their employment status in any way. No members have been expelled or suspended from the union, nor have any resigned, for any reason arising from the disciplinary proceedings. In a test suit brought against one member who refused to pay a fine, one of the locals recovered a judgment in the County Court of Milwaukee County, Wisconsin, which was affirmed on appeal to the Circuit Court of Milwaukee County, and, this court is informed, is now under advisement by the Wisconsin Supreme Court.

The issue before us is whether a union which imposes fines upon its members for crossing a picket line of the union and seeks to secure payment of the fines by suing or by threat of suit is guilty of violating the prohibition, in Section 8(b)(1)(A) of the National Labor Relations Act, as amended, 61 Stat. 136, 29 U.S.C. § 141, *et seq.*, against union action restraining or coercing employees in the exercise of rights guaranteed by Section 7 of the Act. Underlying the issue is the broader problem of the impact of Section 8(b)(1)(A) of the 1947 Taft-Hartley amendments upon union discipline of members.

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[1] One hundred dollars is the maximum fine permissible under the union constitution. Since each crossing of the picket lines was treated as a separate offense, the fines in some cases could have been considerably greater than those actually imposed.

For the purpose of confining the issue we point out that the parties do not dispute that generally employees have the right not to strike; that the union may expel its members for any reason authorized by its rules; and that the union may not demand, nor may an employer accede to the demand, that an employee-member be discharged, prevented from promotion, or have his employment status otherwise adversely affected, except for nonpayment of uniform initiation fees and dues.

The Act in Section 7 [2] guarantees to an employee the right to engage in concerted activities "for the purpose of collective bargaining or other mutual aid or protection" and to refrain from such activities. Section 8(b)(1)(A) of the Act, 61 Stat. 141, 29 U.S.C. § 158(b)(1)(A), provides that

> (b) It shall be an unfair labor practice for a labor organization or its agents—
>
> (1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein . . . .

Allis-Chalmers contends that a union member who crosses a picket line of his own union is exercising his Section 7 right to refrain from engaging in a concerted activity and that if the union disciplines the member for engaging in this activity by any means other than expulsion from the union, it violates Section 8(b)(1)(A). This contention rests upon a literal reading of Section 7. But a literal reading fails to take into account the history and

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[2] 61 Stat. 140, 29 U.S.C. § 157.

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership as a condition of employment as authorized in section 8(a)(3).

purpose of the Section, which shows that it was not intended to immunize a union member from discipline for defiance of a decision of the majority to strike.

There is no merit in the contention, because Congress did not intend in Section 7 to protect everything which might be described as "concerted activities." As an example, the House Committee Report on H.R. 3020, the House version of the bill, pointed out that the courts and the Board had already held that wildcat and sitdown strikes were not protected activities and that the bill would make no change in those rules;[3] and the Conference Report on the House and Senate bills states that Section 7 was limited to "protected activities," even though some unprotected activities may be "concerted" and within the literal meaning of the Section.[4]

Prior to the 1947 Taft-Hartley amendments no federal legislation in any way regulated union internal affairs or activities. Neither the original proposals of the House or Senate specifically prohibited a union from fining its members for "strikebreaking", although the original House versions provided a number of restrictions on unions in their dealings with members.[5] These provisions do not appear in the bill as enacted.

When Congress was considering the 1947 amendments, it was well aware of union disciplinary measures, including fines, for such activities as "strikebreaking". If Congress had intended to prohibit such fines—while at the same time permitting expulsion as a disciplinary measure—the intention to do so could be expected to be clear. See *International Ass'n of Machinists* v. *Gonzales*, 356 U.S. 617, 620 (1958). The indications, however, are to the contrary.[6]

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[3] L.H. 318-19. (References to "L.H." are to the Legislative History of the Labor Management Relations Act, 1947, published by the National Labor Relations Board (1948)).

[4] L.H. 542-43.

[5] L.H. 52-56.

[6] L.H. 1097, 93 Cong. Rec. 4318 (1947) (remarks of Senator Taft): "The pending measure does not propose any limitation with respect to the internal affairs of unions. They still will be able to fire any members they wish to fire, and they still will be able to try any of their members.

The legislative history of Section 8(b)(1)(A) shows also that the prohibition of that Section, with or without the proviso, was directed against the specific evils of force, violence, and threats thereof, mass picketing, and economic reprisals in the form of inducing an employer to discriminate against an employee in his job rights. It was not intended to have the breadth contended for by Allis-Chalmers and to encompass any activity, including fines collectible by legal process, which may be described as "coercive."

Section 12 of the version of the bill passed by the House defined a number of "unlawful concerted activities" by unions which could be enjoined or be the basis of a suit for damages. This provision was not enacted in the final version which became law. The Conference Committee Report [7] explains that Section 8(b)(1)(A) was intended to cover the activities specified in Section 12(a)(1)[8] of the House bill. That Section made no mention of fines as discipline for "strikebreaking."

House Report No. 245 on the House bill as reported by the Committee also made no reference to fines for "strikebreaking" in a listing of results to be achieved by the bill. It states, rather, that "It [the bill] outlaws mass picketing and other forms of violence designed to prevent individuals from entering or leaving a place of employ-

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All that they will not be able to do, after the enactment of this bill, is this: If they fire a member for some reason other than nonpayment of dues, they cannot make his employer discharge him from his job and throw him out of work. That is the only result of the provision under discussion."

[7] L.H. 546.

[8] L.H. 204.

"Sec. 12 (a) The following activities, when affecting commerce, shall be unlawful concerted activities:

"(1) By the use of force or violence or threats thereof, preventing or attempting to prevent any individual from quitting or continuing in the employment of, or from accepting or refusing employment of, or from accepting or refusing employment by, any employer; or by the use of force, violence, physical obstruction, or threats thereof, preventing or attempting to prevent any individual from freely going from any place and entering upon an employer's premises, or from freely leaving an employer's premises and going to any other place. . . ."

ment."[9] In the same report the Committee said, in explaining Section 8(b)(1):

> This is new, making it an unfair labor practice for labor organizations, their officers, agents, and representatives, or for employees, to interfere with, restrain or coerce employees. There is included in this provision a qualification which is not found in the corresponding paragraph covering employers—namely, that the interference proscribed is interference by intimidation.[10]

The language of the Section referred to was:

> (1) by intimidating practices, to interfere with the exercise by employees of rights guaranteed in Section 7(a) or to compel or seek to compel any individual to become or remain a member of any labor organization.[11]

The Supreme Court in *NLRB* v. *Drivers, Chauffeurs, Helpers, Local Union No. 639, Int. Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Curtis Bros.)*, 362 U.S. 274, 286-87 (1960), stated that the Congressional debate shows that the purpose of Section 8(b)(1)(A) is "the elimination of the use of repressive tactics bordering on violence or involving particularized threats of economic reprisal" and that "the note repeatedly sounded is as to the necessity for protecting individual workers from union organizational tactics tinged with violence, duress or reprisal." A fine collectible by legal process hardly comports with the notion of "reprisal" or "intimidation." The "economic reprisal" referred to is such things as securing discharge or reductions in pay or seniority.

The Board also has reached this conclusion with respect to the history of Section 8(b)(1)(A) in holding, in *Local*

[9] L.H. 297.

[10] L.H. 321.

[11] L.H. 178-79. This was § 8(b)(1) of H.R. 3020, as it passed the House.

283, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-AFL-CIO (Wisconsin Motors Corp.), 145 NLRB 1097 (1964), that fines imposed on members and attempted to be collected in State courts for exceeding production quotas do not constitute restraint or coercion within the meaning of that Section. And in *Minneapolis Star and Tribune Co.*, 109 NLRB 727 (1954) the Board held that a $500 fine for failure to attend union meetings and picket during a strike did not violate Section 8(b)(1)(A). The Board said there that a fine may be coercive but it is not what Congress meant by "coercion."

There are other considerations adding rational support for our conclusion. A union member may express agreement or disagreement with union rules or policies, but he cannot simultaneously be a member and also have whatever advantages there might be in non-membership, and he should not be immunized against discipline if as a member he acts against a lawful union activity determined by the majority to be in his, as well as their, interest. "The power to fine or expel strikebreakers is essential if the union is to be an effective bargaining agent. . . ." Summers, *Legal Limitations on Union Discipline*, 64 HARV. L. REV. 1049 (1951).

A union is a form of industrial government and the rights and duties of a member are similar to those of a citizen in a democratic society. Summers, p. 1074. The nature of this relationship was recognized by Congress in enacting Section 101(a)(2), 73 Stat. 522, 29 U.S.C. § 411 (a)(2), of the LMRDA in 1959. In this section of the "bill of rights" of union members, after providing that members shall have the right to meet together and express their views on matters concerning the organization, Congress added the proviso

> That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal and contractual obligations.

Congress would have been inconsistent in adopting this proviso if it had previously, in Section 8(b)(1)(A), forbidden unions to fine members who cross picket lines, for what greater responsibility could a union member have to the union as an institution than to support a lawful strike called by the majority?

Allis-Chalmers' admission of the union's right under the Act to expel members for "strikebreaking" and its challenge of the lesser disciplinary power to fine is inconsistent. If it were true that a union's disciplinary power is limited to expulsion, this would mean that a union would be faced with the dilemma of either permitting anarchy and dissension within its ranks or depleting its strength by expulsion of the offending members. We have not been persuaded by Allis-Chalmers that this absurdity was in the contemplation of Congress.

The employer argues that a fine is not a lesser penalty, but is more coercive than expulsion, since many members would not object to, and might even welcome, expulsion. In many cases, however, expulsion could result in serious financial loss through cancellation of union insurance, pension and other benefits. It would be strange for Congress to prohibit one form of discipline and not the other, where the effect of the one permitted could be equal to, or greater, in severity than the one prohibited.

The employees in this case had the right, under Section 7, to strike or not to strike. But once the union voted to strike, the employees who were union members were bound by the limitation that union membership placed on their right not to strike. It would be difficult to accept the proposition that a union should be the one secular society in our nation which one may enter without being bound by majority rule and without submission to some limitations on rights for the common good. Upon entering, union members must take not only the benefits but the burdens also, *NLRB* v. *International Union UAW-AFL-CIO*, 320 F.2d 12, 16 (1st Cir. 1963), and these burdens are not solely financial. Implicit in the Section 7 right to organize is the duty, once that right has been exercised, to support

the organization. The point is not that an employee, as such, may not refrain from striking, but that a union member may not with impunity flout the will of the majority (in this case a two-thirds majority) expressed in a strike vote.

If the employer's position that a union may not fine "strikebreakers" is correct, then the converse—that a union may not fine wildcat strikers—would also be true. This would render a union virtually powerless to enforce a no-strike clause on its members. The last portion of the proviso to Section 101(a)(2) of the LMRDA quoted above, however, clearly protects the rights of a union reasonably to discipline members who violate contract clauses. We do not think Congress intended to treat "strikebreakers" differently from wildcat strikers, so far as union discipline is concerned.

We disagree with the employer that this court's decision in *Allen Bradley Co.* v. *NLRB*, 286 F.2d 442 (7th Cir. 1961), controls our disposition of the issue in this case. There this court held that proposals of the employer to limit the union's right to fine or discipline members refusing to join in a strike were subjects of mandatory bargaining. In dictum the court said that fines for crossing picket lines impose a sanction on the exercise of the right to work guaranteed by the Act and thus do not relate solely to the internal affairs of the union, so that the proviso of Section 8(b)(1)(A) was inapplicable to protect the union. We do not see how, if fining a union member for crossing a picket line is unlawful coercion, as Allis-Chalmers claims here, it can be a matter for collective bargaining. Nor can we see how, if the employer is "concerned" with a union's fining its members for crossing picket lines, so as to give the employer a bargainable interest in the matter—one of the principal bases of the *Allen Bradley* decision—it can be less "concerned" over the expulsion of members, which the employer here concedes is lawful.

The Board's decision in *Local 138, International Union of Operating Engineers, AFL-CIO*, 148 NLRB No. 74, holding it an unfair labor practice for a union to fine a

member for filing an unfair labor practice charge against the union, also does not militate against our position. That case was based on the principle that a union rule which seeks to frustrate the right of members to avail themselves of the services of the Board is contrary to recognized public policies and beyond the competence of a union to enforce by any coercive means.

We conclude that the Board's decision is not erroneous. The petition for review is accordingly denied.

(8196-8)